IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

A.O. NO. 651 OF 2006

Meenakshi Shashikant Jagdale ... Appellant
VS.
Vijay Vishnu Jadhav & ors. .. . Respondents

Mr. V. S. Gokhale for appellant.
Mr. R. G. Ketkar with Vinod Y. Jadhav for respondent no.1.

CORAM: D. G. KARNIK **J.**

DATE: 18th September 2006

P.C.:

1. Heard learned counsel for the parties.
2. By this appeal the appellant who is the original defendant challenges the order of ad interim injunction dated 20th July 2006, passed by the learned Civil Judge, Senior Division, Karad , below exhibit '5' in Special Civil Suit No. 42 of 2005.
3. The suit property belongs to the respondents, who are the owners. By a sale deed dated 29th July 2005 respondent no.3 sold her 1/4th undivided share in the suit property to the appellant. According to the to the appellant he was put in possession of the property in pursuance of the sale deed. Within less than two months the respondents filed a suit against the appellant for a declaration that the sale deed was obtained by fraud and was void. Learned counsel for the

respondents submitted that in any event respondent nos. 1 and 2 who were owners of 3/4th of the property had not alienated their share and therefore the appellant could not be put in possession of the suit property.

4. In the suit the respondents prayed for a relief of injunction and by the impugned order dated 26th July 2006 the learned Judge confirmed the ad interim order of injunction grated earlier on 29th September 2005. At the hearing of the application for interim injunction, the learned Judge held that respondent no.3 was only a co-owner and therefore could not have put the appellant in possession of the suit property. Prima facie there is no error in this finding of fact. In the absence of partition respondent no.3 could not have put the appellant in possession of the suit property or any specific portion of the property. The proper remedy for the appellant who has purchased an undivided share in the property is to file a suit for partition and separate possession of the property allotted to his share in partition.

5. In the facts and circumstances of the case I do not find any error in the decision rendered by the Civil Judge. The appeal is summarily rejected.

(D.G. KARNIK J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION
Civil application No. 872 of 2006
in

A.O. NO. 651 OF 2006

Meenakshi Shashikant Jagdale ... Appellant
VS.
Vijay Vishnu Jadhav & ors. .. . Respondents

Mr. V. S. Gokhale for appellant.
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In view of the dismissal of the appeal this civil application does not survive and is disposed of.

(D.G. KARNIK J.)